

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 660

Introduced by Fulton, 29; Harms, 48.

Read first time January 21, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to government auditing; to amend sections
2 84-305 and 84-311, Reissue Revised Statutes of Nebraska,
3 and sections 50-1213, 50-1214, 50-1215, and 77-2711,
4 Revised Statutes Cumulative Supplement, 2008; to change
5 provisions relating to access to information by the
6 Legislative Performance Audit Section and Auditor of
7 Public Accounts; to change and provide penalties;
8 to harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 50-1213, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 50-1213 (1) The section shall have access to any and
4 all information and records, confidential or otherwise, including
5 privileged communications pursuant to section 27-503, of any
6 agency, in whatever form they may be, unless the section is
7 denied such access by federal law or explicitly named and denied
8 such access by state law. If such a law exists, the agency shall
9 provide the committee with a written explanation of its inability
10 to produce such information and records and, after reasonable
11 accommodations are made, shall grant the section access to all
12 information and records or portions thereof that can legally
13 be reviewed. Accommodations that may be negotiated between the
14 agency and the committee include, but are not limited to, a
15 requirement that specified information or records be reviewed on
16 agency premises and a requirement that specified working papers be
17 securely stored on agency premises.

18 (2) Upon receipt of a written request by the section
19 for access to any information or records, the agency shall provide
20 to the section as soon as is practicable and without delay, but
21 not more than three business days after actual receipt of the
22 request, either (a) the requested materials or (b)(i) if there is
23 a legal basis for refusal to comply with the request, a written
24 denial of the request together with the information specified in
25 subsection (1) of this section, or (ii) if the entire request

1 cannot with reasonable good faith efforts be fulfilled within
2 three business days after actual receipt of the request due to
3 the significant difficulty or the extensiveness of the request, a
4 written explanation, including the earliest practicable date for
5 fulfilling the request, and an opportunity for the section to
6 modify or prioritize the items within the request. No delay due to
7 the significant difficulty or the extensiveness of a request for
8 access to information or records shall exceed three calendar weeks
9 after actual receipt of such request by any agency.

10 ~~(2)~~ (3) Except as provided in this section, any
11 confidential information or confidential records shared with the
12 section shall remain confidential and shall not be shared by an
13 employee of the section with any person who is not an employee of
14 the section, including any member of the committee. If necessary
15 for the conduct of the performance audit, the section may discuss
16 or share confidential information with the chairperson of the
17 committee. If a dispute arises between the section and the agency
18 as to the accuracy of a performance audit or preaudit inquiry
19 involving confidential information or confidential records, the
20 Speaker of the Legislature, as a member of the committee, will
21 be allowed access to the confidential information or confidential
22 records for the purpose of assessing the accuracy of the
23 performance audit or preaudit inquiry.

24 ~~(3)~~ (4) Except as provided in subdivision (10)(c) of
25 section 77-27,119, if the speaker or chairperson knowingly divulges

1 or makes known, in any manner not permitted by law, confidential
2 information or confidential records, he or she shall be guilty of
3 a Class III misdemeanor. Except as provided in subsection (11) of
4 section 77-2711 and subdivision (10)(c) of section 77-27,119, if
5 any employee or former employee of the section knowingly divulges
6 or makes known, in any manner not permitted by law, confidential
7 information or confidential records, he or she shall be guilty of
8 a Class III misdemeanor and, in the case of an employee, shall be
9 dismissed.

10 ~~(4)~~ (5) No proceeding of the committee or opinion or
11 expression of any member of the committee or section employee
12 acting at the direction of the committee shall be reviewable in any
13 court. No member of the committee or section employee acting at the
14 direction of the committee shall be required to testify or produce
15 evidence in any judicial or administrative proceeding concerning
16 matters relating to the work of the section except in a proceeding
17 brought to enforce the Legislative Performance Audit Act.

18 ~~(5)~~ (6) Pursuant to sections 84-712 and 84-712.01 and
19 subdivision (5) of section 84-712.05, the working papers obtained
20 or produced by the committee or section shall not be considered
21 public records. The committee may make the working papers available
22 for purposes of an external quality control review as required
23 by generally accepted government auditing standards. However, any
24 reports made from such external quality control review shall not
25 make public any information which would be considered confidential

1 when in the possession of the section.

2 Sec. 2. Section 50-1214, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 50-1214 (1) By majority vote, the committee may decide
5 not to include in any document that will be a public record the
6 names of persons providing information to the section or committee.

7 (2) No employee of the State of Nebraska who provides
8 information to the committee or section shall be subject to any
9 ~~penalties, sanctions, or restrictions~~ personnel action, as defined
10 in section 81-2703, in connection with his or her employment as a
11 result of the provision of such information.

12 (3) Any person exercising his or her supervisory or
13 managerial authority to recommend, approve, direct, or otherwise
14 take or affect personnel action in violation of subsection (2) of
15 this section shall be guilty of a Class III misdemeanor and shall
16 be dismissed from employment with the state.

17 Sec. 3. Section 50-1215, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 50-1215 Any person who willfully fails to comply with the
20 provisions of section 50-1213 or who otherwise willfully obstructs
21 or hinders the conduct of a performance audit or preaudit inquiry
22 or who willfully misleads or attempts to mislead any person charged
23 with the duty of conducting a performance audit or preaudit inquiry
24 shall be guilty of a Class II misdemeanor.

25 Sec. 4. Section 77-2711, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 77-2711 (1)(a) The Tax Commissioner shall enforce
3 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
4 enforce rules and regulations relating to the administration and
5 enforcement of such sections.

6 (b) The Tax Commissioner may prescribe the extent to
7 which any ruling or regulation shall be applied without retroactive
8 effect.

9 (2) The Tax Commissioner may employ accountants,
10 auditors, investigators, assistants, and clerks necessary for the
11 efficient administration of the Nebraska Revenue Act of 1967 and
12 may delegate authority to his or her representatives to conduct
13 hearings, prescribe regulations, or perform any other duties
14 imposed by such act.

15 (3)(a) Every seller, every retailer, and every person
16 storing, using, or otherwise consuming in this state property
17 purchased from a retailer shall keep such records, receipts,
18 invoices, and other pertinent papers in such form as the Tax
19 Commissioner may reasonably require.

20 (b) Every such seller, retailer, or person shall keep
21 such records for not less than three years from the making of such
22 records unless the Tax Commissioner in writing sooner authorized
23 their destruction.

24 (4) The Tax Commissioner or any person authorized in
25 writing by him or her may examine the books, papers, records, and

1 equipment of any person selling property and any person liable for
2 the use tax and may investigate the character of the business of
3 the person in order to verify the accuracy of any return made or,
4 if no return is made by the person, to ascertain and determine
5 the amount required to be paid. In the examination of any person
6 selling property or of any person liable for the use tax, an
7 inquiry shall be made as to the accuracy of the reporting of city
8 sales and use taxes for which the person is liable under the Local
9 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
10 the accuracy of the allocation made between the various counties,
11 cities, villages, and municipal counties of the tax due. The Tax
12 Commissioner may make or cause to be made copies of resale or
13 exemption certificates and may pay a reasonable amount to the
14 person having custody of the records for providing such copies.

15 (5) The taxpayer shall have the right to keep or store
16 his or her records at a point outside this state and shall make his
17 or her records available to the Tax Commissioner at all times.

18 (6) In administration of the use tax, the Tax
19 Commissioner may require the filing of reports by any person or
20 class of persons having in his, her, or their possession or custody
21 information relating to sales of property, the storage, use, or
22 other consumption of which is subject to the tax. The report shall
23 be filed when the Tax Commissioner requires and shall set forth the
24 names and addresses of purchasers of the property, the sales price
25 of the property, the date of sale, and such other information as

1 the Tax Commissioner may require.

2 (7) It shall be a Class I misdemeanor for the Tax
3 Commissioner or any official or employee of the Tax Commissioner,
4 the State Treasurer, or the Department of Administrative Services
5 to make known in any manner whatever the business affairs,
6 operations, or information obtained by an investigation of records
7 and activities of any retailer or any other person visited
8 or examined in the discharge of official duty or the amount
9 or source of income, profits, losses, expenditures, or any
10 particular thereof, set forth or disclosed in any return, or
11 to permit any return or copy thereof, or any book containing
12 any abstract or particulars thereof to be seen or examined by
13 any person not connected with the Tax Commissioner. Nothing in
14 this section shall be construed to prohibit (a) the delivery to
15 a taxpayer, his or her duly authorized representative, or his
16 or her successors, receivers, trustees, executors, administrators,
17 assignees, or guarantors, if directly interested, of a certified
18 copy of any return or report in connection with his or her tax,
19 (b) the publication of statistics so classified as to prevent
20 the identification of particular reports or returns and the items
21 thereof, (c) the inspection by the Attorney General, other legal
22 representative of the state, or county attorney of the reports
23 or returns of any taxpayer when either (i) information on the
24 reports or returns is considered by the Attorney General to be
25 relevant to any action or proceeding instituted by the taxpayer

1 or against whom an action or proceeding is being considered or
2 has been commenced by any state agency or the county or (ii) the
3 taxpayer has instituted an action to review the tax based thereon
4 or an action or proceeding against the taxpayer for collection of
5 tax or failure to comply with the Nebraska Revenue Act of 1967 is
6 being considered or has been commenced, (d) the furnishing of any
7 information to the United States Government or to states allowing
8 similar privileges to the Tax Commissioner, (e) the disclosure of
9 information and records to a collection agency contracting with the
10 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
11 the disclosure to another party to a transaction of information
12 and records concerning the transaction between the taxpayer and
13 the other party, or (g) the disclosure of information pursuant to
14 section 77-27,195 or 77-5731.

15 (8) Notwithstanding the provisions of subsection (7) of
16 this section, the Tax Commissioner may permit the Postal Inspector
17 of the United States Postal Service or his or her delegates to
18 inspect the reports or returns of any person filed pursuant to the
19 Nebraska Revenue Act of 1967 when information on the reports or
20 returns is relevant to any action or proceeding instituted or being
21 considered by the United States Postal Service against such person
22 for the fraudulent use of the mails to carry and deliver false and
23 fraudulent tax returns to the Tax Commissioner with the intent to
24 defraud the State of Nebraska or to evade the payment of Nebraska
25 state taxes.

1 (9) Notwithstanding the provisions of subsection (7) of
2 this section, the Tax Commissioner may permit other tax officials
3 of this state to inspect the tax returns, reports, and applications
4 filed under sections 77-2701.04 to 77-2713, but such inspection
5 shall be permitted only for purposes of enforcing a tax law and
6 only to the extent and under the conditions prescribed by the rules
7 and regulations of the Tax Commissioner.

8 (10) Notwithstanding the provisions of subsection (7)
9 of this section, the Tax Commissioner may, upon request, provide
10 the county board of any county which has exercised the authority
11 granted by section 81-1254 with a list of the names and addresses
12 of the hotels located within the county for which lodging sales tax
13 returns have been filed or for which lodging sales taxes have been
14 remitted for the county's County Visitors Promotion Fund under the
15 Nebraska Visitors Development Act.

16 The information provided by the Tax Commissioner shall
17 indicate only the names and addresses of the hotels located within
18 the requesting county for which lodging sales tax returns have been
19 filed for a specified period and the fact that lodging sales taxes
20 remitted by or on behalf of the hotel have constituted a portion of
21 the total sum remitted by the state to the county for a specified
22 period under the provisions of the Nebraska Visitors Development
23 Act. No additional information shall be revealed.

24 (11)(a) Notwithstanding the provisions of subsection (7)
25 of this section, the Tax Commissioner shall, upon written request

1 by the Auditor of Public Accounts or the Legislative Performance
2 Audit Committee, make tax returns and tax return information open
3 to inspection by or disclosure to Auditor of Public Accounts or
4 Legislative Performance Audit Section employees for the purpose of
5 and to the extent necessary in making an audit of the Department
6 of Revenue pursuant to section 50-1205 or 84-304. Confidential
7 tax returns and tax return information shall be audited only upon
8 the premises of the Department of Revenue. All audit workpapers
9 pertaining to the audit of the Department of Revenue shall be
10 stored in a secure place in the Department of Revenue.

11 (b) No employee of the Auditor of Public Accounts or
12 Legislative Performance Audit Section shall disclose to any person,
13 other than another Auditor of Public Accounts or Legislative
14 Performance Audit Section employee whose official duties require
15 such disclosure or as provided in subsections ~~(2)~~ and ~~(3)~~ (3) and
16 (4) of section 50-1213, any return or return information described
17 in the Nebraska Revenue Act of 1967 in a form which can be
18 associated with or otherwise identify, directly or indirectly, a
19 particular taxpayer.

20 (c) Any person who violates the provisions of this
21 subsection shall be guilty of a Class I misdemeanor. For purposes
22 of this subsection, employee includes a former Auditor of Public
23 Accounts or Legislative Performance Audit Section employee.

24 (12) For purposes of this subsection and subsection (11)
25 of this section:

1 (a) Disclosure means the making known to any person in
2 any manner a tax return or return information;

3 (b) Return information means:

4 (i) A taxpayer's identification number and (A) the
5 nature, source, or amount of his or her income, payments, receipts,
6 deductions, exemptions, credits, assets, liabilities, net worth,
7 tax liability, tax withheld, deficiencies, overassessments, or tax
8 payments, whether the taxpayer's return was, is being, or will be
9 examined or subject to other investigation or processing or (B) any
10 other data received by, recorded by, prepared by, furnished to, or
11 collected by the Tax Commissioner with respect to a return or the
12 determination of the existence or possible existence of liability
13 or the amount of liability of any person for any tax, penalty,
14 interest, fine, forfeiture, or other imposition or offense; and

15 (ii) Any part of any written determination or any
16 background file document relating to such written determination;
17 and

18 (c) Tax return or return means any tax or information
19 return or claim for refund required by, provided for, or permitted
20 under sections 77-2701 to 77-2713 which is filed with the Tax
21 Commissioner by, on behalf of, or with respect to any person
22 and any amendment or supplement thereto, including supporting
23 schedules, attachments, or lists which are supplemental to or part
24 of the filed return.

25 (13) Notwithstanding the provisions of subsection (7) of

1 this section, the Tax Commissioner shall, upon request, provide
2 any municipality which has adopted the local option sales tax
3 under the Local Option Revenue Act with a list of the names and
4 addresses of the retailers which have collected the local option
5 sales tax for the municipality. The request may be made annually
6 and shall be submitted to the Tax Commissioner on or before June
7 30 of each year. The information provided by the Tax Commissioner
8 shall indicate only the names and addresses of the retailers. No
9 additional information shall be revealed.

10 (14) In all proceedings under the Nebraska Revenue Act
11 of 1967, the Tax Commissioner may act for and on behalf of the
12 people of the State of Nebraska. The Tax Commissioner in his or her
13 discretion may waive all or part of any penalties provided by the
14 provisions of such act or interest on delinquent taxes specified in
15 section 45-104.02, as such rate may from time to time be adjusted.

16 (15)(a) The purpose of this subsection is to set forth
17 the state's policy for the protection of the confidentiality
18 rights of all participants in the system operated pursuant to
19 the streamlined sales and use tax agreement and of the privacy
20 interests of consumers who deal with model 1 sellers.

21 (b) For purposes of this subsection:

22 (i) Anonymous data means information that does not
23 identify a person;

24 (ii) Confidential taxpayer information means all
25 information that is protected under a member state's laws,

1 regulations, and privileges; and

2 (iii) Personally identifiable information means
3 information that identifies a person.

4 (c) The state agrees that a fundamental precept for model
5 1 sellers is to preserve the privacy of consumers by protecting
6 their anonymity. With very limited exceptions, a certified service
7 provider shall perform its tax calculation, remittance, and
8 reporting functions without retaining the personally identifiable
9 information of consumers.

10 (d) The governing board of the member states in the
11 streamlined sales and use tax agreement may certify a certified
12 service provider only if that certified service provider certifies
13 that:

14 (i) Its system has been designed and tested to ensure
15 that the fundamental precept of anonymity is respected;

16 (ii) Personally identifiable information is only used and
17 retained to the extent necessary for the administration of model 1
18 with respect to exempt purchasers;

19 (iii) It provides consumers clear and conspicuous
20 notice of its information practices, including what information
21 it collects, how it collects the information, how it uses the
22 information, how long, if at all, it retains the information, and
23 whether it discloses the information to member states. Such notice
24 shall be satisfied by a written privacy policy statement accessible
25 by the public on the web site of the certified service provider;

1 (iv) Its collection, use, and retention of personally
2 identifiable information is limited to that required by the member
3 states to ensure the validity of exemptions from taxation that are
4 claimed by reason of a consumer's status or the intended use of the
5 goods or services purchased; and

6 (v) It provides adequate technical, physical, and
7 administrative safeguards so as to protect personally identifiable
8 information from unauthorized access and disclosure.

9 (e) The state shall provide public notification to
10 consumers, including exempt purchasers, of the state's practices
11 relating to the collection, use, and retention of personally
12 identifiable information.

13 (f) When any personally identifiable information that
14 has been collected and retained is no longer required for the
15 purposes set forth in subdivision (15) (d) (iv) of this section, such
16 information shall no longer be retained by the member states.

17 (g) When personally identifiable information regarding an
18 individual is retained by or on behalf of the state, it shall
19 provide reasonable access by such individual to his or her own
20 information in the state's possession and a right to correct any
21 inaccurately recorded information.

22 (h) If anyone other than a member state, or a person
23 authorized by that state's law or the agreement, seeks to discover
24 personally identifiable information, the state from whom the
25 information is sought should make a reasonable and timely effort to

1 notify the individual of such request.

2 (i) This privacy policy is subject to enforcement by the
3 Attorney General.

4 (j) All other laws and regulations regarding the
5 collection, use, and maintenance of confidential taxpayer
6 information remain fully applicable and binding. Without
7 limitation, this subsection does not enlarge or limit the state's
8 authority to:

9 (i) Conduct audits or other reviews as provided under the
10 agreement and state law;

11 (ii) Provide records pursuant to the federal Freedom of
12 Information Act, disclosure laws with governmental agencies, or
13 other regulations;

14 (iii) Prevent, consistent with state law, disclosure of
15 confidential taxpayer information;

16 (iv) Prevent, consistent with federal law, disclosure or
17 misuse of federal return information obtained under a disclosure
18 agreement with the Internal Revenue Service; and

19 (v) Collect, disclose, disseminate, or otherwise use
20 anonymous data for governmental purposes.

21 Sec. 5. Section 84-305, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 84-305 (1) The Auditor of Public Accounts shall have
24 access to all ~~records~~ any and all information and records,
25 confidential or otherwise, including privileged communications

1 pursuant to section 27-503, of any public entity, in whatever
2 form or mode the records may be, unless the auditor's access
3 to the records is specifically prohibited or limited by federal
4 or state law. ~~auditor is denied such access by federal law or~~
5 explicitly named and denied such access by state law. If such a
6 law exists, the public entity shall provide the auditor with a
7 written explanation of its inability to produce such information
8 and records and, after reasonable accommodations are made, shall
9 grant the auditor access to all information and records or portions
10 thereof that can legally be reviewed.

11 (2) Upon receipt of a written request by the Auditor
12 of Public Accounts for access to any information or records,
13 the public entity shall provide to the auditor as soon as is
14 practicable and without delay, but not more than three business
15 days after actual receipt of the request either (a) the requested
16 materials or (b) (i) if there is a legal basis for refusal to comply
17 with the request, a written denial of the request together with the
18 information specified in subsection (1) of this section, or (ii)
19 if the entire request cannot with reasonable good faith efforts
20 be fulfilled within three business days after actual receipt of
21 the request due to the significant difficulty or the extensiveness
22 of the request, a written explanation, including the earliest
23 practicable date for fulfilling the request, and an opportunity for
24 the auditor to modify or prioritize the items within the request.
25 No delay due to the significant difficulty or the extensiveness of

1 any request for access to information or records shall exceed three
2 calendar weeks after actual receipt of such request by any public
3 entity.

4 (3) No provisions of state law shall be construed to
5 change the nonpublic nature of the data obtained as a result of
6 the access. When an audit or investigative finding emanates from
7 nonpublic data which is nonpublic pursuant to federal or state law,
8 all the nonpublic information shall not be made public.

9 Sec. 6. Any person who willfully fails to comply with the
10 provisions of section 84-305 or who otherwise willfully obstructs
11 or hinders the conduct of an audit, examination, or related
12 activity by he Auditor of Public Accounts or who willfully misleads
13 or attempts to mislead any person charged with the duty of
14 conducting such audit, examination, or related activity shall be
15 guilty of a Class II misdemeanor.

16 Sec. 7. Section 84-311, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 84-311 (1) All final audit reports issued by the Auditor
19 of Public Accounts shall be maintained permanently as a public
20 record in the office of the Auditor of Public Accounts. Working
21 papers and other audit files maintained by the Auditor of Public
22 Accounts are not public records and are exempt from sections 84-712
23 to 84-712.05. The information contained in working papers and audit
24 files prepared pursuant to a specific audit is not subject to
25 disclosure except to a county attorney or the Attorney General in

1 connection with an investigation made or action taken in the course
2 of the attorney's official duties or to the Legislative Performance
3 Audit Committee in the course of the committee's official duties
4 and pursuant to the requirements of subdivision (16) of section
5 50-1205 or subdivision (5) of section 84-304. ~~Public entities being~~
6 ~~audited and the federal agencies that have made grants to public~~
7 ~~entities being audited shall also have access to the relevant~~
8 ~~working papers and audit files.~~ A public entity being audited and
9 any federal agency that has made a grant to such public entity
10 shall also have access to the relevant working papers and audit
11 files, except that such access shall not include information that
12 would disclose or otherwise indicate the identity of any individual
13 who has confidentially provided the Auditor of Public Accounts
14 with allegations of wrongdoing regarding, or other information
15 pertaining to, the public entity being audited. For purposes of
16 this subsection, working papers means those documents containing
17 evidence to support the auditor's findings, opinions, conclusions,
18 and judgments and includes the collection of evidence prepared
19 or obtained by the auditor during the audit. The Auditor of
20 Public Accounts may make the working papers available for purposes
21 of an external quality control review as required by generally
22 accepted government auditing standards. However, any reports made
23 from such external quality control review shall not make public
24 any information which would be considered confidential under this
25 section when in the possession of the Auditor of Public Accounts.

1 (2) If the Auditor of Public Accounts or any employee
2 of the Auditor of Public Accounts knowingly divulges or makes
3 known in any manner not permitted by law any record, document, or
4 information, the disclosure of which is restricted by law, he or
5 she is subject to the same penalties provided in section 84-712.09.

6 Sec. 8. (1) The Auditor of Public Accounts may decide not
7 to include in any document that will be a public record the names
8 of persons providing information to the Auditor of Public Accounts.

9 (2) No employee of the State of Nebraska or any of
10 its political subdivisions who provides information to the Auditor
11 of Public Accounts shall be subject to any personnel action,
12 as defined in section 81-2703, in connection with his or her
13 employment as a result of the provision of such information.

14 (3) Any person exercising his or her supervisory or
15 managerial authority to recommend, approve, direct, or otherwise
16 take or affect personnel action in violation of subsection (2)
17 of this section shall be guilty of a Class III misdemeanor and
18 shall be dismissed from employment with the state or political
19 subdivision.

20 Sec. 9. Original sections 84-305 and 84-311, Reissue
21 Revised Statutes of Nebraska, and sections 50-1213, 50-1214,
22 50-1215, and 77-2711, Revised Statutes Cumulative Supplement, 2008,
23 are repealed.